
CHALLENGES IN THE PREVENTION AND REDUCTION OF TOBACCO USE AND OBESITY IN ARGENTINA

REPORT FILED BY:



Fundación Interamericana del Corazón Argentina (FIC Argentina - Interamerican Heart Foundation-Argentina), whose mission is to promote public policies and social changes that

guarantee the protection of the right to health, through the reduction of chronic noncommunicable diseases (NCDs). FIC Argentina is an affiliate of the Interamerican Heart Foundation, an organization with a trajectory of over 20 years. Within the field of the prevention of NCDs, FIC Argentina takes different action lines to promote the design and implementation of tobacco control, alcohol abuse control, nutrition and prevention of obesity and physical activity policies with a human rights perspective. Furthermore, it also develops a variety of activities and projects to raise awareness of the importance of these measures with the final objective of protecting the right to health.
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PARALLEL REPORT TO THE PRE-SESSIONAL WORKING GROUP FOR THE 61st SESSION OF THE COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

FOR CONSIDERATION IN THE REVIEW OF ARGENTINA

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I. Introduction

This report will focus on obesity and tobacco control, both major risk factors for Non-communicable Diseases (NCDs). The World Health Organization (WHO) has identified these diseases as the main threat to human health. They include cardiovascular disease, cancer, chronic respiratory disease and diabetes¹.

According to the WHO, obesity and overweightness have become one of the most serious problems of public health worldwide. There are 42 million children living with obesity, and nearly 2 billion adults – almost 1 in 3 – adults in the world are overweight or obese.² In the same way, tobacco is one of the most preventable causes of death globally. Tobacco consumption causes **6 million deaths worldwide each year**, and nearly 80% of the world's smokers live in low-and-middle income countries³. Indeed, in the region of Latin America alone, more than 370,000 people die every year from diseases caused by tobacco consumption⁴.

Governments have a core obligation to ensure the health and welfare of their citizens and residents. How governments elect to fulfill their obligations – through direct regulation and oversight, norm-setting through strategies and promotion – is the prerogative of their politics yet ultimately the State is the responsible party for the nation's health.

Where harmful influences to public health exist, the State bears the burden of preventing harm when possible. While doing so, State shall respect the rights and autonomy of individuals to enjoy their health and make fully informed choices, fulfilling its core obligations by creating conditions conducive for health.⁵

II. Obesity in Argentina

Argentina has a very high prevalence of NCDs risk factors due in part to high rates of overweight, obesity, smoking and tobacco use. These have been steadily increasing in the last several decades. Obesity and obesity-related NCDs are rampant in Argentina. A recent survey of Argentina's population revealed that 50.5% of Argentinians carried excess weight.⁶ 34.8% of the population carrying excessive weight are classified as “overweight” (with a body mass index –BMI– greater than or equal to 25kg/m²) and 14.8% are obese (with a BMI over

¹ Noncommunicable Diseases, WHO, <http://www.who.int/mediacentre/factsheets/fs355/en/>.

² See WHO, Obesity and Overweight Fact Sheet (2016), <http://www.who.int/mediacentre/factsheets/fs311/en>.

³ WHO global report: mortality attributable to tobacco 2012.

⁴ Institute of Clinical Effectiveness and Health (IECS); Tobacco: Situation in Latin-American (2014), available at: <http://www.umaza.edu.ar/archivos/file/iecs%202014.pdf>.

⁵ R. Magnusson & D. Patterson, *The Role of Law and Governance in the Global Response to Non-Communicable Diseases, Globalization and Health* (2014). See also WHO, *Global Action Plan for the Prevention and Control of NCDs 2013-2020; WHO Global Strategy on Diet, Physical Activity and Health, WHA57.17*.

⁶ A. K. Arbex, et. al, Rocha, D. R. T. W, *Obesity Epidemic in Brazil and Argentina: A Public Health Concern, Journal of Health, Population, and Nutrition*, 32(2), 327–334 (2014) [hereinafter *Obesity Epidemic*].

30kg/m²).⁷ 40.3% of the population carrying excess weight is composed of women.⁸

Besides, in the last five years, overweight adolescents from 13 to 15 years of age increased from 24.5% to 28.6%. Obesity rates in this age group increased from 4.4% to 5.9%.⁹ According to 2010 data from the WHO Global Database on Child Growth and Malnutrition, Argentina has the highest percentage of childhood obesity in children under five in the Latin American with a prevalence of 7.3%.

A local study that analyzed the Global School-based Student Health Survey (GSHS) in Argentina showed that adolescents whose parents had low educational level, overweight and obesity were 29.6% and 6.7%, respectively, while in adolescents with parents with high educational level, overweight and obesity were 25.3% and 4.3% respectively. The difference between the two sectors was statistically significant ($p < 0.05$). Adolescents whose parents had the lowest educational level had a 31% (OR: 1.31) higher probability of being overweight as compared to those with parents with the highest level of education. The same analysis also showed that male adolescent boys were 97% (OR 1.97) more likely to be overweight as compared to adolescent females. On the other hand, adolescents of 13 years of age or younger were 51% (OR 1.51) more likely to be overweight versus those of 14-years-of-age or older¹⁰. The same survey noted that only 16.7% of the students participated in physical activity, for at least 60 minutes per day, in the past 7 days. Thus, economically vulnerable populations are more greatly affected by these diseases.

Over a short period of time, the levels of physical inactivity, rates of diabetes, and obesity have increased tremendously in Argentina.¹¹ Obesity and its related risk-factors are especially burdensome to those urban-dwelling Argentinians, who fall into a lower socioeconomic status.¹² Rising rates of obesity also contribute to elevated healthcare spending, both privately and governmentally,¹³ which generates enormous costs for the healthcare system. In a country like Argentina, where the State lacks enough resources to fully comply with obligations associated with the right to health, overspending in preventable diseases becomes a matter of urgency.

1. Marketing Regulations

Advertising and marketing for unhealthy food and beverage products is one of the most important areas for public health agencies to exercise oversight and

⁷ *Id.*

⁸ *Id.*

⁹ National Ministry of Health. World School Health Survey. Available at: http://www.msal.gob.ar/ent/images/stories/vigilancia/pdf/2014-09_informe-EMSE-2012.pdf

¹⁰ Social Gaps in the Obesity's Epidemic in Argentinean Children and Adolescents: Situational Diagnosis ; FIC Argentina. (2016)

¹¹ Veronica Schoj, *NCDs in Argentina: Civil Society Actions to Address Them*, FIC ARGENTINA, available at <http://www.cogh-csih.ca/assets/Schoj.pdf>.

¹² *Id.*

¹³ *Obesity Epidemic, supra* note 6.

regulation. Exposure to advertising and marketing of unhealthy foods and beverages increases actual or likely consumption, particularly for children and adolescents, and can lead to overweightness and obesity and other corresponding negative health impacts.¹⁴ Unhealthy foods and beverages are often appealing, inexpensive, and ubiquitous even before advertisers and manufacturers employ additional techniques to incentivize consumptions like celebrity endorsements, sponsorships for events or sport teams, or gimmicks like toys.

Argentina's Law on Audiovisual Communication Services No. 26.522 establishes rules, principles and authorities that could lead to a protective regulatory framework for children and adolescents in terms of advertising. Article 81 includes a provision prohibiting direct marketing to children in the following terms: "advertising aimed at children should not incite the purchase of products exploiting their inexperience and credulity" and "advertisements (...) will not induce behavior detrimental to the Environment or physical and moral health of children and adolescents". Furthermore, the Consumer Defense Law No. 24.240/12 establishes the obligation to provide accurate information and the Commercial Loyalty Law No. 22802/13 regulates misleading advertising. Also, ANMAT provision 4980/0514 highlights that when advertising, "the interests of public health should not be violated". Lastly, the self-regulation body "Consejo de Autorregulación Publicitaria" establishes a voluntary standard that likewise discourages marketing to children.

Exposure of Argentinean population, especially children, to advertising of unhealthy food products is very high and disproportionate to that of healthy and natural foods¹⁵. The increases in prevalence for obesity and overweight suggest that unhealthy consumer habits remain in Argentina and the current framework is inadequate to both meet public health goals as well as Argentina's duties under the Covenant.

Argentina is particularly derelict in ensuring an environment that fosters health and healthy eating. Children under 12 are exposed to over 60 advertisements for products with low nutritional value, even when primarily viewing programs or channels directed towards them. A 2017 study, recording over 400 hours of children's programming, identified 1 in 5 advertisements related to food and beverages and, of those only a third of those products were nutritionally healthy.¹⁶ Half of the advertised foods were high in sugar and 1 in 4 were high in saturated fat. Dairy products (which may include ice cream and similar sweetened items), candies and sweets, fast-food meals, and beverages were the most commonly advertised items.¹⁷

¹⁴ See WHO, Obesity and Overweight: Fact Sheet (June 2016), <http://www.who.int/mediacentre/factsheets/fs311/en>.

¹⁵ Allemandi L, Castronuovo L, Tiscornia MV, Ponce M, Schoj V. Food advertising on Argentinean television: are ultra-processed foods in the lead?. *Public Health Nutrition*. 2017 Jul:1-9.

¹⁶ A. Roviroso et. Al. *Food and Beverage Advertising on Children's TV Channels in Argentina: Frequency, Duration, and Nutritional Quality*, *Arch. Arg. Pediatr.* (2017).

¹⁷ *Id.*

A national policy to reduce exposure to advertising of unhealthy foods should not only include all marketing and communication channels but also clear nutritional standards based on a nutrient profile model that determines which products are unhealthy and therefore should not be promoted among children and adolescents. The types of products (food and non-alcoholic beverages) to be regulated and the audiences to be included in the regulation should be clearly determined. In addition, there should be effective mechanism of penalties to ensure compliance. It is important to take into account that partial measures have been ineffective. The industry finds mechanisms to avoid restrictions and has the resources to reach the same consumers addressed in the regulation through alternative channels. Finally, industry self-regulation does not work because they usually include weak restriction guidelines, their participation is voluntary, and there are no monitoring mechanisms and penalties or oversight.

2. Food Labeling

The nutritional label shown in food packages should provide the necessary information to the consumer, allowing him/her to know the amount of critical nutrients, such as added sugar, that he/she is consuming when consuming.

In Argentina, the estimated added sugar consumption is about triple of the recommended amount (close to 35 teaspoons per day). Our country is among the five countries with the highest consumption of added sugar in the world¹⁸. These indicators are alarming and are reflected in the increase in the levels of overweight and obesity in children (34.5%)¹⁹ and adults (57.9%) in Argentina²⁰. Despite these figures, the declaration of sugars in the nutritional label according to the Argentine Food Code²¹ is not obligatory, with the consequent disinformation of the consumers about the origin and the quantity of sugars contained in foods and drinks.

Furthermore, Argentina currently has a poor regulation over food and beverage labeling. There are three food packaging messages: mandatory labeling, health and nutritional claims and marketing messages.

With respect to mandatory labeling, the regulation requires food manufacturers to show information regarding the ingredients, origin, expiration dates, and the nutritional panel (including required nutrients such as sodium, proteins, carbohydrates, fats, trans fats). Consequently, the information that food

¹⁸ Sugar consumption at a crossroad. Research Institute, Credit Suisse. (2013). Available at: <https://publications.credit-suisse.com/tasks/render/file/index.cfm?fileid=780BF4A8-B3D1-13A0-D2514E21EFFB0479> (Consultation November 1 2014)

¹⁹ Second World School Health Survey, Argentina. National Ministry of Health. (2012) . Available at: http://www.msal.gov.ar/ent/images/stories/vigilancia/pdf/2014-09_informe-EMSE-2012.pdf (Consultation November 1 2014)

²⁰ Third National Survey of Risk Factors for Non-communicable Diseases. National Ministry of Health. (2013) Available at: <http://www.msal.gov.ar/images/stories/publicaciones/pdf/11.09.2014-tercer-encuentro-nacionalfactores-riesgo.pdf> (Consultation November 1 2014)

²¹ Chapter V, "RULES FOR FOOD'S LABELING AND ADVERTISING", CAA, ANMAT. Available at: http://www.anmat.gov.ar/alimentos/codigoa/Capitulo_V.pdf (Consultation October 14 2014)

manufacturers provide to consumers cannot be easily understood and it fails to assist buyers in making healthy choices.²²

With respect to health and nutritional claims, the regulation in Argentina is also weak, and the food industry takes advantage of it. A recent investigation carried out by FIC Argentina, FUNDEPS and Universidad Católica de Santa Fe found that four out of ten packaging of cereals, desserts and cookies of low nutritional quality, use this type of messages.

Argentina has no specific and effective legislation to restrict the advertising in packaging of unhealthy food and beverage products. In this respect, the same study found that three out ten of the products high in sodium, fats or sugar; use cartoon characters and celebrities in the packaging to promote their products.

The Argentinean labeling deficiencies result in a violation of human rights, such as the right to health, and the right to a healthy diet. Better regulations would also respect consumer's' right to accurate and easy-to-understand nutritional information. Other countries have embraced better policies in order to protect these rights. In Ecuador, the law forces the food manufacturers to report the levels of fat, salt, and sugar using a “traffic light” system: green if it has a low (safe) content, yellow if it has medium content, and red if it has a high content²³. In Chile, Act 20,606²⁴ requires food manufacturers to incorporate a warning sign in foods with high contents of salt, fats, and sugar. The warning consists of a black “stop” sign stating “high content ...” for the excess nutrient.

3. Soda's Taxes

The consumption of certain foods and food products has been repeatedly implicated as a contributing factor to the recent rise in metabolic disorders worldwide. Research has consistently identified the excess consumption of sugar as one of the major causative agents in the on-going epidemics of obesity, hypertension, diabetes, and other metabolic disorders.²⁵ One of the main sources of added sugar consumption is the consumption of sugary drinks²⁶, and Argentina is the world's largest consumer of soft drinks, with 137 liters per capita per year, according to Euromonitor 2014)²⁷.

22 FIC Argentina, FUNDEPS, Universidad Católica de Santa Fe. “Rotulado facultativo y técnicas de marketing dirigidas a niños y niñas en envases de alimentos procesados de Argentina” Available at: http://ficargentina.org/images/stories/Documentos/1708_informe_envases_completo.pdf

23 PAHO, Labeling of processed foods, healthy public policy in Ecuador, is presented at a meeting of Representatives of the World Health Organization. Representatives from 153 countries around the world : http://www.paho.org/ecu/index.php?option=com_content&view=article&id=1638:2015-11-10-14-23-51&Itemid=360

24 Law No. 20.606 on the nutritional composition of food and its advertising, decree 13/2015, Chile. (2015)

25 D. Marron et. al., *Should We Tax Unhealthy Foods and Drinks?*, *Tax Policy Center Urban Institute and Brookings Institute* (Dec. 2015).

26 Hu FB. Resolved: there is sufficient scientific evidence that decreasing sugar-sweetened beverage consumption will reduce the prevalence of obesity and obesity-related diseases. *Obes Rev.* 2013 Aug;14(8):606-19 . Available at: <http://www.ncbi.nlm.nih.gov/pubmed/23763695> (Consulta 14 de octubre 2014)

27 Carbonates in Argentina. Euromonitor 2014. Available at: <http://www.euromonitor.com/carbonates-inargentina/report> (Consultation November a 1 2014)

Taxes and pricing policy can alter consumption of a targeted product. Taxes are typically “passed on” to consumers by the manufacturers, elevating the retail price of the food. Studies indicate that taxes may substantially change dietary habits, with people eating less of the higher priced food or beverage. For example, one report notes that Mexico’s beverage tax resulted in an average 12% increase in retail price with a concomitant decline in soda purchases of 10%.²⁸ In addition, modeling studies evaluating the available scientific data on non-communicable diseases suggest, “taxes on carbonated drinks and saturated fat and subsidies on fruits and vegetables would be associated with beneficial dietary change, with the potential for improved health.”²⁹

Education, labeling, and advertisement controls work in concert with taxes and pricing schemes and are essential components of any comprehensive governmental policy focused on NCD rate modification.^{30 31} When policymakers choose to employ taxes to improve nutrition and health, the sugar content of drinks is the optimal place to start. It is the taxing of content, and not volume or sales, that holds the most promise for achieving the stated health goals.³² All taxes should be designed to encourage businesses to develop healthier products and avoid switching consumers to alternative, equally unhealthy, substitutes. Finally, careful consideration must be given to how subsequent revenues from any taxes are utilized. Earmarking revenues for health food subsidies or other public health related programs is laudable, but consideration for assistance to low-income families who are most affected by the regressive nature of these taxes must also be weighed.

With regard to soda taxes, the current regulations in Argentina are insufficient to provide any deterrent to consumption of the product and, consequently, do not aid in improving general health. The *impuestos internos* (internal taxes) establish that all concentrates for soda preparation, syrup juices and the sodas, have an internal tax of 8%. However, this percentage is reduced by 50% if the beverages or the concentrates for its preparation have any percentage of fruit juice.³³ The WHO recommends an increase of 20% in taxes for sugar-sweetened beverages in order to reduce their intake.³⁴ In reality many beverages – like fruit juice – contain large quantities of “added sugar” and are not necessarily healthier than other sugar-sweetened beverages. Undeniably, narrowly defining sugar-sweetened beverages and/or excluding added sugars and fruit juice undermines the purpose of the tax. Therefore, the current regulations do not in way positively impact the obesity and overweight issues in Argentina.

²⁸ J. Grogger, *Soda Taxes and the Prices of Sodas and Other Drinks: Evidence from Mexico* (2015).

²⁹ H. Eyles, et. al., *Food Pricing Strategies, Population Diets, and Non-Communicable Disease: A Systematic Review of Simulation Studies*, PLoS Med (2012), <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001353>.

³⁰ M. Galante et. al., *Epidemiological situation of obesity in Argentina: Epidemiological Condition of Obesity in Argentina*, 84 Rev. Argent. Cardiol. 132 (2016),

³¹ D. Marron et. al., *Should We Tax Unhealthy Foods and Drinks?*, Tax Policy Center Urban Institute and Brookings Institute (Dec. 2015).

³² *Id.*

³³ Law No. 24.674, Internal Taxes Law,

³⁴ WHO, *Fiscal Policies for Diet and Prevention of Noncommunicable Diseases*, p. 24. (2015)

4. School Environment

According to the WHO, childhood overweight and obesity are one of the major public health problems of the 21st century. It is estimated that childhood obesity has almost tripled in the last 30 years.

Argentina has shown increases in overweight and obesity rates among children, adolescents, and adults. Obesity went from 4.4% to 5.9%, according to data obtained by the World School Health Survey (WSHS) 2012, conducted to adolescents 13 to 15 years. This situation is related to the high consumption of products of low nutritional value and high sugar, fat and sodium content and habitual intake of sugary drinks, as well as insufficient physical activity.

In our country, 60% of children and adolescents between 5 and 17 years of age do not perform enough physical activity, while 59.5% of students participate in one or no gymnastics class per week. In addition, while different scientific entities advise 150 minutes per week for primary school students and 225 for secondary schools, the official curriculum proposes 90 and 120 respectively³⁵.

According to the WSHS 2012, 80.2% of schools have at least one kiosk and 91.4% of these kiosks offer products of low nutritional value such as sugary drinks, sweets, ice cream, sandwiches with high fat sausages, Snacks, sweet cookies, hot dogs and burgers, etc. As for product advertisements at school kiosks, the survey showed that in more than half of the kiosks (58.6%) there were soft drink advertisements. In addition, only 5.6% of schools included drinking water in courtyards or free drinking water dispensers. Regarding the number of weekly physical education classes at the school during the last school year, only 25.9% of adolescents had five or more times per week.

In Córdoba, evaluations of the population of juvenile showed that in 2012, between 25% and 30% of all school children attending pre-scholar and primary school weighted more than they actually should. Overall, there were fewer occurrences of overweight and obesity in pre-scholar than in primary school classes. Results indicated that the former reached between 10% and 15%, while the latter exceeded 30%. In addition, the primary schools' final evaluation also indicated an evidence of frequent obesity, i.e. being between 10% and 15%.³⁶

Policies to promote healthier school environments should be comprehensive³⁷ ³⁸ and should include measures to improve the food supply provided in schools, eliminate the provision or sale of sugary drinks and foods with low nutritional

³⁵ Available at: [http://WWWuca.edu.ar/uca/common/grupo 68/files/Boletin 2, UCA ODS 2015. Web.pdf](http://WWWuca.edu.ar/uca/common/grupo%2068/files/Boletin%20UCA%20ODS%202015.pdf)

³⁶ Global survey about scholar health. Available at: www.msal.gov.ar/ent/images/stories/vigilancia/.../2014-09_informe-EMSE-2012.pdf

³⁷ Alaimo K, Oleksyk SC, Drzal NB, et al. Effects of changes in lunch---time competitive foods, nutrition practices, and nutrition policies on low---income middle---school children's diets. *Child Obes* 2013; 9: 509--23

³⁸ Adamson A, Spence S, Reed L, et al. School food standards in the UK: implementation and evaluation. *Public Health Nutr* 2013; 16: 968--81.

³⁹ Spence S, Delve J, Stamp E, Matthews JN, WhiteM, Adamson AJ. The impact of food and nutrient---based standards on primary school children's lunch and total dietary intake: a natural experiment

quality, among others. In addition, it is necessary to ensure access to drinking water in schools and sports establishments, to include nutrition education and healthy habits in schools' curricula. It is also necessary to increase hours of physical education in the school's curriculum and ensure the incorporation of qualified staff and building structures that allow their implementation, among others.

Regarding measures that include the supply of food in schools, it is important to note that there are studies that showed that when healthy foods are available but unhealthy options are not eliminated, measures do not have a significant impact on the diet of the students.^{40 41 42} The selection of foods to be offered should be based on the nutritional quality of the products and not on the quantity of calories as outlined in the WHO-PAHO policy recommendations. It is also crucial that kiosks increase the supply of healthy products.

Furthermore, it is necessary to impose a federal policy for nutrition in schools so that it sets minimal standards which could be adapted by provincial policies. School environments should be regulated on a provincial and municipal level taking into consideration the particular reality of the different provinces.

III. Tobacco consumption in Argentina.

According to the National Risk Factor Survey of the Health Ministry, 25% of the Argentinean population smokes⁴³. The smoking prevalence in Argentina is about 22,1% in adult population and 24.1% in young people. Additionally, 46.8% of the population said that they were exposed to tobacco smoke⁴⁴. According to studies⁴⁵, in Argentina, tobacco causes the loss of 998,881 years of life each year and accounts for 13.2% of all deaths occurring in the country. This represents 44.851 deaths per year that could be avoided⁴⁶. However, if tobacco control policies were strengthened, these deaths per year could be prevented.

In line with what is happening around the world, tobacco epidemic in Argentina is shifting from men to women and from rich to poor people⁴⁷. In this context,

⁴⁰ Sallis J, McKenzie T, Conway T. Environmental interventions for eating and physical activity: a randomized controlled trial in middle schools. *Am J Prev Med.* 2003;24 (3):209–17.

⁴¹ Lytle L, Murray D, Perry C, Story M, Birnbaum A, Kubik M, et al. Schoolbased approaches to affect adolescents' diets: results from the TEENS study. *Health Educ Behav.* 2004;31(2):270–87

⁴² French S, Story M, Fulkerson J, Hannan P. An environmental Intervention to promote lower--fat food choices in secondary schools: outcomes Of the TACOS study. *Am J Public Health.* 2004;94:1507–12.

⁴³ National Ministry of Health, National Institute of Statistics and Census; "Third National Risk Factor Survey 2013": Main results presentation (2014).

⁴⁴ National Ministry of Health; INDEC, OMS/OPC, CDC; Global Adult Tobacco Survey (GATS) 2012; Ciudad de Buenos Aires, 2013. Available at: http://www.msal.gov.ar/ent/images/stories/vigilancia/pdf/2013-09_encuesta-tabaquismo-adultos-25-junio.pdf

⁴⁵ Institute of Clinical Effectiveness and Health (IECS); Deaths, illness and tobacco taxation in Argentina. May 2016. Available at: http://www.iecs.org.ar/wp-content/uploads/FINAL-OK-MAYO-2016-Flyer_Argentina1.pdf.

⁴⁶ Institute of Clinical Effectiveness and Health (IECS); Deaths, illness and tobacco taxation in Argentina. May 2016. Available at: http://www.iecs.org.ar/wp-content/uploads/FINAL-OK-MAYO-2016-Flyer_Argentina1.pdf.

⁴⁷Lopez AD, Collishaw NE, Piha T. A descriptive model of the cigarette epidemic in developed countries. *Tobacco Control.* 1994;3(3):242.

according to the Risk Factors' National Survey⁴⁸, although consumption diminished among women (22.4% in 2009 and 20.9% in 2013) and men (32.4% in 2009 and 29.9% in 2013), the gap between them was reduced. Moreover, tobacco consumption causes the death of 11,348 women every year.⁴⁹ According to the estimated data, lung cancer has doubled among women in the last 38 years.⁵⁰ Studies also assessed this problem with reference to specific women groups. For instance, 11% of Argentinian pregnant women continue smoking during pregnancy.⁵¹ Also, young women smoke more than young men (27% against 21%), according to the data.⁵²

As with the case of obesity and overweight, tobacco related diseases more heavily affect vulnerable groups. Unless the State develops specific policies to address these impacts, the current situation is likely to increase inequalities with regards to the right to health in Argentina.

1. Argentina's ratification of the Framework Convention on Tobacco Control (FCTC)

The FCTC is the legal framework that places obligations upon States to adopt tobacco control policies. It facilitates the implementation of laws that are necessary to protect the global population from the toxic effects of tobacco consumption and exposure to secondhand smoke. By August 2017, 181 countries had ratified the FCTC⁵³, and Argentina is the only country in South America that is still not a member of this Convention; the first public global health treaty.

The FCTC establishes a set of measures that are proven to be effective to protect human right to health from the consequences of tobacco consumption and exposure to secondhand smoke. Among others, the treaty requests governments to implement 100% smoke-free environments, complete bans of tobacco advertising, promotion and sponsorship, warning labels on the package, measures to raise tobacco prices, mechanisms to control illicit trade and to promote transparency and accountability in the relationship between tobacco industry and decision makers.

Scientific evidence demonstrates that, worldwide, the tobacco industry has undermined country's efforts to implement effective tobacco control policies that endanger industry profitability⁵⁴. In order to properly protect the right to health

⁴⁸ Id. At 43

⁴⁹ R. Mejia & E.J. Perez-Stable, *Tobacco epidemic in Argentina: The cutting edge of Latin America*, 2 PREVENTION AND CONTROL 49-55 (2006).

⁵⁰ National Ministry of Health; Tobacco consumption in Argentina report (2010) Available at <http://www.msal.gov.ar/htm/site/pdf/informe-especial-Tabaco-31mayo2010.pdf>.

⁵¹ F. Althabe et. al, *Smoking during pregnancy in Argentina and Uruguay*, 68 MEDICINA 48-54 (2008).

⁵² Schargrodsky, et. al, *CARMELA: assessment of cardiovascular risk in seven Latin American cities*, 121 AM. J MED. 58-66 (2008).

⁵³ United Nations Treaty Collection, Who Framework Convention on Tobacco Control Status. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX4&chapter=9&clang=en

⁵⁴ Panamerican Health Organization. Profits over people (2002). Available at: http://www1.paho.org/English/DD/PUB/profits_over_people.pdf

of its population from the tobacco industry strategies, it is not enough to approve tobacco control legislation. There is a clear need of ratifying the FCTC⁵⁵.

Ratifying the FCTC would give Argentina greater legal tools to advance tobacco control policies according to the international standards and it will allow the government to participate in decision-making process together with FCTC member States. Therefore, Argentina's ratification of the FCTC would provide the optimal framework for the implementation of more effective means for reducing demand of tobacco. It also offers a true pathway for the maximal protection of public health.

2. Tobacco products advertising, promotion and sponsorship.

Tobacco marketing, which includes advertising, promotion and sponsorship, has been shown to increase youth initiation of smoking⁵⁶. The continuing tobacco epidemic is directly linked to the effectiveness of industry's advertising and promotional schemes, which are targeted at the recruitment of new smokers who are primarily children and adolescents. Advertisement as well as promotion and sponsorship have not only been shown to increase tobacco consumption, but also frequently achieves this end by presenting information designed to mislead or confuse younger audiences⁵⁷.

In 2011, National Government passed law 26.687, which met the standards of FCTC, such as the implementation of smoke-free environments, health warning labels, prohibition on the sale of tobacco products to minors, and the regulation of the content of cigarettes and educational programs. However, the adopted restrictions on tobacco advertising, promotion and sponsorship are insufficient to protect the right to health and show the necessity to move towards stronger regulations.

Law 26.687 places bans on tobacco advertising, including TV, radio, newspapers and internet, and restricts certain promotion and sponsorship activities. Article 5 specifically states, "advertising, promotion, and sponsorship of tobacco products through any medium of diffusion or communication, whether direct or indirect, is prohibited"⁵⁸. However, Article 6 of Law 26.687 enumerates exceptions to Article 5's prohibition on advertising and promotion of tobacco products, and, as a result, permits "point of sell advertising," allows tobacco promotion in "tobacco growing-related publications," and "direct communications toward individuals of 18 years and older" with verification of age and consent. These exceptions essentially undermine the efficacy of Article 5 and allow the industry to directly advertise on potentially more effective modalities, including social media. For

⁵⁵ FIC Argentina, Reasons why Argentina needs to ratify the Framework Convention on Tobacco Control (FCTC), 2016. Available at: http://www.ficargentina.org/images/stories/Documentos/160922_documento_cmct.pdf

⁵⁶ DiFranza JR, Wellman RJ, Sargent JD Weitzman M, Hipple BJ, Winickoff JP. Tobacco Promotion and the Initiation of Tobacco Use: Assessing the Evidence for Causality. *Pediatrics* (2006); 117: p. e1237-e1248.

⁵⁷ R.L. Andrews & G.R. Franke. The determinants of cigarette consumption: A meta-analysis, 10 *J. Pub. Policy and Marketing* 81-100 (1991); K.E. Warner. *Selling Smoking: Cigarette Advertising and Public Health*. Washington, DC: American Public Health Association; 1986.

⁵⁸ Law No. 26.687, Jun. 13, 2011, [CXIX] B.O. 1 (Arg.), Article 5

instance, according to a 2014 FIC Argentina study, 73.7% of the products at different points of sale did not follow the law in terms of product display.⁵⁹ ⁶⁰ In Córdoba, a study carried out by FUNDEPS at different points of sale, also showed that that tobacco companies were heavily relying on point of sales to continue to market their products, especially in areas near schools⁶¹.

Indeed, taking advantage of the loopholes in law 26.687, the tobacco industry has been using an unconventional marketing tool called "Bellow The Line" (BTL). FIC Argentina has been closely monitoring the industry's activities regarding this type of aggressive marketing and has concluded that tobacco product marketing is present in all types of mass means of communication, from e-mail newsletters to advertisement for cultural events⁶². Furthermore, it is relevant to mention that the tobacco industry has developed aggressive campaigns to promote flavored cigarettes in Argentina. National tobacco control law 26.687 does not regulate cigarettes content, which gives the industry the opportunity to sell tobacco tasting like sweets or alcoholic drinks⁶³. It has been proved that flavored cigarettes are more appealing to young people and the tobacco industry has been promoting these products in order to catch new smokers ⁶⁴.

The WHO noted that in order to have effective controls in this area, the ban must be directed at "all individuals and entities" responsible for the "production, placement, and/or dissemination of tobacco advertising, promotion and sponsorship."⁶⁵ Partial bans encourage manipulation and enable avoidance. Only through enactment of regulations that assure an absolute and comprehensive ban on all forms of direct and indirect tobacco advertising can Argentina further the goal of tobacco consumption reduction.

3. Tobacco Taxes

Studies have consistently demonstrated that a significant increase in cigarette prices markedly reduces tobacco consumption, especially diminishing the use by young people and by those in lower socio-economic sectors.⁶⁶ This price

⁵⁹ FIC Argentina. The advertising strategies Massalin Particulares and Nobleza Piccardo violating the law (2015). Available at: http://www.ficargentina.org/images/stories/Documentos/150522_tabacaleras_en_la_mira_final.pdf

⁶⁰ FIC Argentina. Tobacco products advertising, promotion and sponsorship in points of sales in Argentina: Characteristics and compliance within the existing national legislation and the innovative industry's strategies. 2015. Available at:

http://www.ficargentina.org/images/stories/documentos/151104_informe_publicidad_tabaco_kioscos_2015.pdf

⁶¹ FUNDEPS, Estrategias de marketing de la industria tabacalera en puntos de venta de la ciudad de Córdoba. Available at:

http://www.fundeps.org/sites/default/files/estrategias_de_marketing_de_la_industria_tabacalera_en_puntos_de_venta_de_la_ciudad_de_cordoba.pdf

⁶² FIC Argentina. The advertising strategies Massalin Particulares and Nobleza Piccardo violating the law. 2015. Available at: http://www.ficargentina.org/images/stories/Documentos/150522_tabacaleras_en_la_mira_final.pdf

⁶³ FIC Argentina, Mojito Fest Analysis, (2015). Available at: http://ficargentina.org/images/stories/Documentos/informe_mojito_fest.pdf

⁶⁴ Carpenter CM, Wayne GF, Pauly JL, Koh HK, Connolly GN. New cigarette brands with flavors that appeal to youth: tobacco marketing strategies. *Health Affairs (Millwood)*. (2005) Nov-Dec;24(6):1601-10.

⁶⁵ Guidelines for the application of Article 13 (Tobacco Advertising, Promotion and Sponsorship) of the WHO Framework Convention on Tobacco Control, 2008.

⁶⁶ WHO Report on the Global Tobacco Epidemic, 2008: The MPOWER package. Geneva: World Health Organization, (2008). ISBN: 978 92 4; WHO Technical Manual on Tobacco Tax Administration, World Health Organization 2010; F.J. Chaloupka et.al., Effectiveness of tax and price policies in tobacco control. *Tob Control*, 2011;20(3):235-8. Epub 2010 Nov

sensitivity represents a powerful deterrent to tobacco demand and evidence indicates that for every 10% increase in the price of cigarettes consumption is reduced by 4% and 8%, in adults and young people respectively.⁶⁷

Article 6 of the FCTC, in conjunction with the guiding principles and recommendations agreed in 2012 at the Fifth Conference of the Parties (COP5), that Parties must implement taxation measures aimed at reducing tobacco consumption. Price and tax measures are an effective means of reducing tobacco consumption among various sectors of the population, particularly young people and low-income sectors.

In 2016, the Government implemented a decree that increased tobacco taxes slightly reducing the affordability of cigarettes. Then in 2017, the Executive extended the policy by passing Decree 15/2017 which contains the same measure⁶⁸.

The National Decree 15/2017⁶⁹ increased tobacco taxes slightly reducing the affordability of some tobacco products, allowing the industry to raise the prices of some of its trademarks. This situation created a breach between premium and cheaper products. In this context, several smokers are substituting from smoking premium trademarks to cheaper ones, and the tobacco industry is advertising strongly cheaper cigarettes⁷⁰. This strategy is undermining governmental efforts to reduce tobacco consumption by raising tobacco prices.

It is important to mention that this decree will be applicable until December 2017. Consequently, the Government has to pass a law ratifying the decree before its due date, including all tobacco products and an updating mechanism, in order to make the tax increase sustainable. A comprehensive, national-level tobacco control law must include a stringent taxing scheme on tobacco products, including all tobacco products. In addition, it must include a control mechanism that prevents the industry from implementing prices strategies that weaken the public health measure.

29; H. Ross & F.J. Chaloupka, Economic policies for tobacco control in developing countries. *Salud Publica Mex.* 2006;48 Suppl 1:S113-20.

⁶⁷ CDC: MMWR, *Achievements in Public Health, 1900-1999: Tobacco Use -- United States, 1900-1999* (1999), 986-93; F. J. Chaloupka, *Macro-Social Influences: The Effects of Prices and Tobacco Control Policies on the Demand for Tobacco Products*, *Nicotine and Tobacco Research* 1(Suppl 1):S105-9, 1999.

⁶⁸Decree 5/2017, available at: <https://www.boletinoficial.gob.ar/web2/utills/pdfView?file=%2Fpdf%2Fnorma%2F157320%2Fnull%2FPrimera%2FQTisEtpLtoRBhUt6tERQKy1bLSlJVilbLXLiufJNJvPCeePitJRI5A%3D%2F1>

⁶⁹ Decree 15/2017. Available at: <https://www.boletinoficial.gob.ar/web2/utills/pdfView?file=%2Fpdf%2Fnorma%2F157320%2Fnull%2FPrimera%2FQTisEtpLtoRBhUt6tERQKy1bLSlJVilbLXLiufJNJvPCeePitJRI5A%3D%2F1>

⁷⁰ Germán Rodríguez Iglesias et al. Analysis of cigarette demand in Argentina: the impact of price changes on consumption and government revenues. *Salud Pública de México*, [S.l.], v. 59, n. 1, p. 95-101, ene. (2017). ISSN 1606-7916

IV. Argentina's Obligation to protect citizens from Non-Communicable Diseases.

Argentina's obligation to protect citizen's health is contained in both the National Constitution and in the international human rights treaties that enjoy a constitutional hierarchy due to their incorporation in the domestic system.

The right to health is contained in different provisions of Argentina's National Constitution. For example, Article 41 of the constitution guarantees a right of all inhabitants "*to a **healthy**, balanced environment, apt for human development and for productive activities which meet their present needs without compromising those of future generations (...)*". This article addresses the individual aspects of the right to health, in addition to its collective or communal features, which are both affected by the activities of the tobacco and food industries. Furthermore, the link between the right to health and the right to a safe environment contained in Article 41 informs why the State is urgently required to strengthen its policies addressing non-communicable diseases.

Additionally, Article 42 explicitly protects the right to health when referring to consumer's rights in the following terms: "*Consumers and users of goods and services have the right, in the consumer relationship, to **the protection of their health**, safety and economic interests, to adequate and truthful information, to freedom of choice, and to conditions of equitable and dignified treatment (...)*." The connection between consumer rights and the right to health, as expressed in the Constitution, reaffirms Argentina's obligation to protect its citizens from the deceptive marketing tactics that the tobacco and food industries are specifically directing towards them.

In the international law context, Argentina's obligations regarding right to health can be found in two types of sources: International treaties and the interpretative guidelines of those same instruments produced by authoritative sources.

Article 75 of the Constitution, subsection 22, grants special hierarchy to a list of international human rights treaties and affords them a higher status in the domestic system than that conferred upon national laws. In that sense, international instruments⁷¹, which guarantee the right to health, are considered as binding as any other constitutional provision,

Regarding the ICESCR, Argentina has an obligation under Article 11 of the Covenant to ensure that its people have adequate food, meaning not just calorically sufficient but also matching their dietary. General Comment 12 is particularly indicative as to Argentina's obligation to fulfill this right: "[T]he State must proactively engage in activities intended to strengthen people's access to

⁷¹ Such as the Convention on the Elimination of All Forms of Discrimination against Women, the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the International Covenant on Economic, Social and Cultural Rights (CESCR Convention) and the American Convention on Human Rights.

and utilization of resources and means to ensure their livelihood, including food security.”⁷² Argentina must show that it is proactively working to ensure that its people are accessing healthy foods and, where necessary, are protected from influences that hinder consumption of healthy foods. Food consumption is a significant contributor and driver to human health, especially where particular trends indicate adverse health impacts

Article 12 further embellishes on Argentina’s duty to ensure the right to health for its people. Tobacco epidemic has been proven as major cause of preventable death globally, and in Argentina causes more than 44 thousand deaths per year. In this context, the Committee on Economic Social and Cultural (CESCR) rights stated that it was “concerned about the high level of tobacco consumption in the State party, especially among women and youth.” CESCR recommended that Argentina “ratify and implement” the FCTC and “develop effective public awareness and tax and pricing policies to reduce tobacco consumption, in particular targeting women and youth.”⁷³

Argentina is obligated under ICECSR to shield citizens from the harms of Non-Communicable Diseases. General Comment 14 of the CESCR recognizes three types of obligations on Party States: Respect (refrain from interfering); protect (take measures to prevent future violations) and fulfill (adopt positive measures to promote the rights).⁷⁴ According to the CESCR, the right to health can only be attained if the services or initiatives created to guarantee the right meet the elements of availability, accessibility, acceptability, and quality.⁷⁵ These elements gain a special importance in the case of upholding the right to health of citizens.

The obesity, overweight and tobacco epidemic in Argentina among youth, adolescents, and adults necessitates Argentina to honor its Article 12 obligations and take measures to prevent NCDs risks factors. According to previous CESCR recommendations, these obligations address the Argentine state at its different levels. Argentina needs to ban marketing campaigns of unhealthy products, to raise taxes of tobacco and sugary drinks and to adopt further measures according to the international standards. Failing to prevent NCDs is a violation to State Party obligation to promote the highest standard of health to Argentinean population.

V. Suggested Issues and Questions

⁷² CESCR General Comment No. 12: The Right to Adequate Food (Art. 11), ¶15, U.N. Doc. E/C.12/1999/5. Available at: <http://www.refworld.org/pdfid/4538838c11.pdf>.

⁷³ E/C.12/ARG/CO/3, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Argentina (2011).

⁷⁴ ESCR Committee, General Comment No. 14, The Right to the Highest Attainable Standard of Health, P. 33, U.N. Doc. E/C.12/2000/4 (Nov. 8, 2000), available at <http://www.ohchr.org/english/bodies/cescr/comments.htm>.

⁷⁵ *Id.* at parr. 12.

Taking into consideration the information described in this report, we recommend the Committee to ask the Argentinean State the following questions regarding its obligation to prevent NCDs and to protect the right to health:

1. Which measures are being implemented by the Government to regulate marketing strategies of unhealthy food?
2. Which measures are being implemented by the Government to adapt the food labeling to the international best practices?
3. Which tax measures are being implemented by Government to discourage the consumption of soda?
4. When the Government of Argentina plans to ratify the Framework Convention on Tobacco Control?
5. Which policies or regulations are being implemented by the Government to make more restrictive the regulation of tobacco products marketing campaigns?
6. What actions has the Government taken to sanction a National Tobacco Tax Law?
7. What actions has the Government taken to protect vulnerable groups such a young people, women and economically deprived populations from NCDs?